IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 29.06.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice V.DHANAPALAN

Writ Appeal Nos.2736 & 2737 of 2001

Pon Muthu Nadar … Appellant in WA.2736/01

Muthu … Appellant in WA.2737/01

Vs.

1. State of Tamilnadu,
rep. by its Secretary,
Industries Department,
Fort St. George, Chennai 600 009.

2. The Vikaram Sarabai Space Centre,
rep. by its Director,
Department of Space,
Government of India,
Trivanandapuram 695 022.

3. The Administrative Officer,
Liquid Propulsion Service Centre,
Mahendragiri, Kavalkinaru,
Tirunelveli District.

4. The Sub Collector,
Cheranmahadevi, Tirunelveli District.

5. The Special Tahsildar (L&A)
Vallioor, Tirunelveli District.

6. The Chairman,
ISRO, Head Quarters,
Anthikish Bhavan,
Bangalore. … Respondents in all WAs.

Appeals against the Common Order of the learned single Judge, dated 21.08.2000, in W.P. Nos.14162 and 14189 of 2000.

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For Appellants : Ms.D.Nagasaila for
Mrs.N.Beula Johnselvaraj

For R-1, R-4 & R-5 : Mr.M.Dhandapani,
Addl. Govt. Pleader

For R-3 & R-6 : Mr.M.T.Arunan, Addl. Central
Government Standing Counsel.

NA for R2

COMMON JUDGMENT

P.SATHASIVAM, J.

Aggrieved by the Common Order of the learned single Judge, dated 21.08.2000, petitioners in W.P.Nos.14162 and 14189 of 2000 by name Ponmuthu Nadar and Muthu preferred the above Appeals. For convenience, we shall refer the parties as arrayed before the learned single Judge.

2. In the Writ Petitions, the prayer was for the issuance of a writ of mandamus to direct the respondents - State Government and Vikram Sarabai Space Centre, Trivandrum, and their subordinate officers to fulfil their promise by providing suitable employment to the children of the petitioners viz., Gowri (daughter of the petitioner in W.P. No.14162 of 2000) and M.Senthilagan (son of the petitioner in WP No.14189 of 2000) in the third respondent Liquid Propulsion Test Facilities Centre, Mahendragiri, under 'Land Affected Category'. The learned Judge, who disposed of the said Writ Petitions along with W.P. No.14165 of 2000 filed by one Arumuga Nadar, after finding that though the lands were acquired in the year 1982 and 1983, the petitioners claimed the benefit of G.O.M.S. No.656, Labour and Employment Department, dated 29.06.1978, nearly after 17 years of acquisition, which makes it clear that the petitioners' families were not displaced immediately on account of acquisition of their lands; held that they are not entitled to the benefits of the said G.O. and dismissed the Writ Petitions, hence, the present Appeals.

3. Heard Ms.D.Nagasaila, learned counsel appearing for the appellants; Mr.M.T.Arunan, learned Additional Central Government Standing Counsel for R-3 and R-6; and Mr.M.Dhandapani, learned Additional Government Pleader for R-1, R-4 and R-5.

4. The only point for consideration in these Appeals is as to whether suitable employment could be ordered to be given to the daughter and son of the petitioners in the third respondent Liquid Propulsion Test Facilities Centre, Mahendragiri, under 'land affected category'.

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5. It is not in dispute that the petitioners are amongst the 58 agriculturists displaced by the acquisition of land for Liquid Propulsion Test Facilities Centre by the third respondent at Mahendragiri.

The petitioner in W.P. No.14162 of 2000 was the owner of 4.23 acres of land at Panagudy Village, Radhapuram Taluk, Tirunelveli District. He asserted that he was maintaining his family by cultivating the said land and that the same was the only source of his income. It is also his claim that the respondents made him to give up his land assuring that at least one person from the family of the displaced person would be given employment in the third respondent-Centre at Mahendragiri on completion of the construction.

It is not in dispute that, by Award dated 10.11.1982, the petitioners were paid a meagre amount as compensation towards acquisition of their lands. It is also brought to our notice that the 4th respondent/Sub Collector, Cheranmadevi, through his Certificate dated 21.11.1996, certified that the petitioners are affected persons eligible for employment as per G.O.Ms. No.656, Labour and Employment Department, dated 29.06.1978. After completion of the construction work and on coming to know that the third respondent initiated the process of recruitment of non-management staff and also appointed skilled and unskilled workers, the petitioners made representations on 6.3.1992 and 3.8.1992 and also through their Association Secretary, requesting respondents 2 and 3 to provide suitable employment to their heirs. Bio-Data and necessary particulars were also furnished. It was intimated that the vacancies are filled up from among the candidates sponsored by the Employment Exchange at Tirunelveli and Nagercoil and that there is no special concession with regard to employment.

6. Before the learned Judge, the Department had taken a stand that, irrespective of G.O.M.S.No.656, Labour and Employment Department, dated 29.06.1978, recruitment without reference to Employment Exchange is not permissible.

7. The learned Judge, after finding that though the lands were acquired in the year 1982 and 1983, the petitioners claimed the benefit of the Government Order nearly after 17 years of acquisition; and also finding that the petitioners were not displaced immediately on account of acquisition of their lands; dismissed the Writ Petitions.

8. As stated in the affidavit, the petitioners are amongst the 58 agriculturists displaced by the acquisition of land for formation of Liquid Propulsion Test Facility centre by the third respondent at Mahendragiri. The petitioner in W.P. No.14162 of 2000 was the owner

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of the land bearing Survey No.1831/1 & 3 covering an extent of 4.23 acres at Panagudy Village, Radhapuram Taluk, Tirunelveli District. The petitioner in W.P. No.14189 of 2000 was the owner of the land bearing Survey No.515/6 covering an extent of 0.39.5 hectares at Kavalkinaru village, Tirunelveli District. In their respective affidavits, the petitioners have specifically asserted that they were maintaining their family only by cultivating the said lands. They also asserted that the acquired lands were their only source of income.

9. In the light of the specific claim of the petitioners, let us consider, whether they are entitled to the benefits of G.O. No.656, Labour and Employment Department, dated 29.06.1978.

10. In order to understand the claim of the parties, it is useful to refer G.O. No.656, Labour and Employment Department, dated 29.06.1978, which reads as under:-

" ABSTRACT

Employment - Employment assistance to families displaced on account of acquisition of land - procedure of recruitment orders - issued.

Labour and Employment Department

G.O.Ms.No.656 Dated 29.6.1978

Read also.

1. G.O.Ms.No.188, Personal and Administrative Reforms, dated 28.12.1976.

2. From the Govt. of Tamil Ministry of Industries letter No.F.B.(4)/LP/77 dated 15.1.1977.

3. From the Director of Employment and Training letter No.W1/36453/75 dated 2.9.77 and 13.10.77.

Order:

In the G.O., first read above, orders were issued among others, that the members of families whose lands have been acquired for Govt. purposes as well as for the projects of the Public Sector undertakings and displaced as a result of the acquisition be accorded third priority under group II of the list of priorities annexed to the said G.O. in the matter of provisions of Employment assistance through Employment Exchanges.

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2. The Govt. of India in their letter second read above, have requested this Government to issue instructions to the Private Sector as well as State Public Sector Undertakings to provide employment to at least one person of the family displaced on account of acquisition of land for the establishment of a project in the Public Sector or in the Private Sector. The Government have examined the above suggestion in detail in consultation with the Director of Employment and Training, Madras and pass the following orders:-

i) All Public Sector Undertakings may recruit without reference to Employment Exchange, at least one member of each family which is displaced on account of acquisition of lands for any projects of such Public Sector Undertakings etc. provided that the acquired land should have been the only or major source of sustenance for the family.

ii) The term displaced family will include owner of the land or the cultivating tenants of Varamadars.

iii) The appointing authorities concerned of the respective Public Sector Undertakings etc. shall themselves ascertain and decide whether the land was the major source of sustenance of family displaced from the land acquired, without insisting on production of any certificate from Revenue authorities before recruitment is made.

iv) For consideration of appointment as indicated in 2(i) above, first priority should be assigned to the cultivating owner and the cultivating tenant or varamdars and second priority only should be given to the absentee landlords.

3. The departments of Secretariat are requested to communicate the above orders to all Public Sector Undertakings, Statutory Corporation etc. under their control for adoption with immediate effect.

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/ by order of the Governor /

C. RAMACHANDRAN
Secretary to Government.

/ true copy /

Sd. Section Officer."

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11. It is clear that, apart from the compensation as provided under the Land Acquisition Act and Rules, the above said Government Order mandates the Public Sector Undertakings to recruit at least one member from each family, which is displaced on account of acquisition of lands for any project of such Public Sector Undertaking without reference to the Employment exchange. No doubt, it provides that there must be materials to show that the entire land should have been the only or major source of sustenance for the family.

12. We have already referred to the assertion made by the petitioners that they were mainly depending on the income from their agricultural lands and that, after acquisition, they lost everything. There is no specific denial by the authorities concerned regarding the above statement. In spite of the Government Order, which mandates the Public Sector Undertakings to provide employment at least to one member of each family which is displaced on account of acquisition of land for any project, the learned Judge rejected the claim only on the ground of delay. First of all, the Government Order referred to above does not prescribe any period of limitation. Secondly, the persons, who were displaced due to acquisition, cannot demand job immediately after taking over of the lands. In other words, the Requisitioning Body, after taking possession and completing the construction, on due commencement of the Project/Scheme, has to take steps to recruit suitable persons from among the displaced persons. It is further seen that both the petitioners, while forwarding the representations, enclosed copy of patta, certificates, etc. to show that their lands were acquired for setting up the Liquid Propulsion Test facility Centre by the Department of Space, Government of India. The particulars further show that the petitioners also made a specific request to provide suitable job to their children enclosing all the required details such as their Educational Qualification etc. Copies of those documents/materials are available in the type set of papers. We verified the same.

13. In the light of the direction in G.O. No.656, Labour and Employment Department, dated 29.06.1978, we are satisfied that the Writ Petitioners have made out a case for employment of one person in their family under 'land affected category'.

14. Though the learned Judge rejected the claim of the petitioners on the ground of delay, it is not the case of the respondents that, even after acquisition, the petitioners are getting sufficient income. As rightly pointed out by Ms.D.Nagasaila, learned counsel for the petitioners, as per the Government Order referred above, the burden is on the Appointing Authority concerned of the Public Sector Undertaking to decide as to whether the land acquired was the major source of sustenance for the family displaced due to

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acquisition. The Government Order makes it clear that there is no need on the part of the displaced persons to produce any certificate from the Revenue authorities before recruitment is made.

15. In the decision reported in AIR 1994 SC 2137 (Calcutta Port Trust v. Deba Prosad Bag), while considering the case of Calcutta Port Trust, the Supreme Court upheld various directions issued by the Calcutta High Court for providing employment. When lands were acquired for Calcutta Port Trust, based on the G.O., several persons filed Writ Petitions praying for appointment. The Calcutta High Court, after considering similar Government Order as in the present case, found 30 out of the 50 Writ Petitioners eligible for appointment and issued directions for providing employment. Aggrieved by the said Order, the Calcutta Port Trust preferred Appeal before the Division Bench. After going through the report of the Screening Committee, the Division Bench dismissed all the Appeals filed by the Calcutta port Trust, hence, further appeals were filed before the Hon'ble Supreme Court. After considering the orders of the High Court and the stand taken by the Port Trust, the Supreme Court directed the Port Trust to screen all the 21 persons and others before employing them, and thereafter to implement the direction of the learned single Judge as confirmed by the Division Bench. To that extent, the Supreme Court partly allowed the Appeal filed by the Calcutta Port Trust. It is clear that the persons, who were displaced due to acquisition for Port Trust, were directed to be given employment subject to screening of their claim by a committee of the Port Trust.

16. In Dharnipathy/Lakshmi Devi vs. Secretary to Government of Tamil Nadu and 3 Others (1997 Writ L.R. 498), in the case of acquisition of land for Naval Air Station, North Arcot District, a learned Judge of this Court directed the authorities to provide employment and issued several directions as issued by the Supreme Court in Calcutta Port Trust case (cited supra).

17. Ms.D.Nagasaila, learned counsel for the petitioners, has also brought to our notice that this Court, in a batch of Writ Petitions, ie., W.P. Nos.3490 of 1999 etc., dated 12.10.1999, almost in similar circumstances, issued mandamus on the basis of the Government Orders, directing the respondents therein to fulfil their promise by providing suitable employment to their sons/daughters/legal heirs if any in L.P.G. Bottling plants, Gummidipoondi, under 'land affected category'. We were informed by the learned counsel for the petitioners that the direction in those cases has been complied with and implemented. The said Common Order is also applicable to the case on hand.

18. It is not in dispute that the petitioners are the persons whose lands have been taken away and that they are entitled to

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employment on the basis of G.O.Ms. No.656, Labour and Employment Department, dated 29.06.1978. The promise given by the respondents to provide employment to the persons, whose lands have been compulsorily acquired at nominal rates, is an obligation and the same cannot be rejected on the ground of laches. Inasmuch as the petitioners are claiming their right based on the Government Order, if they satisfy and are found to be eligible upon scrutiny by the Officers, they are entitled to employment irrespective of delay or laches. Even otherwise, as rightly pointed out by the learned counsel for the petitioner, the learned Judge failed to appreciate that by the very nature, the projects are carried out in a phased manner and employment is given as and when a phase is completed. There is no compulsion on the part of the authorities to provide employment immediately after acquisition. In other words, after completion of the construction and commencement of the project, depending on the availability, employment would be provided at the appropriate time. Further as said earlier, the petitioners also asserted that they are suffering due to the action of the respondents since the land acquired was their only source of livelihood. All these material aspects have not been considered by the learned Judge, who committed an error in rejecting their claim.

19. In such circumstances, the Common Order dated 21.08.2000, made in W.P. Nos.14162 and 14189 of 2000, is set aside. Direction is issued to the respondents to fulfil their promise by providing suitable employment to one of the children of each of the petitioners in the third respondent - Liquid Propulsion Test Facility Centre under 'Land Affected Category' subject to scrutiny and verification by the officers of the third respondent, within a period of eight weeks from the date of receipt of copy of this Judgment.

Writ Appeals are allowed. No costs.

JI.

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary, Industries Department,
Fort St. George, Chennai 600 009.

2. The Director,The Vikaram Sarabai Space Centre Department of Space,
Government of India,Trivanandapuram 695 022.

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3. The Administrative Officer, Liquid Propulsion Service Centre, Mahendragiri, Kavalkinaru, Tirunelveli District.

4. The Sub Collector, Cheranmadevi, Tirunelveli District.

5. The Special Tahsildar (L&A) Vallioor, Tirunelveli District.

6. The Chairman, ISRO, Head Quarters, Anthikish Bhavan, Bangalore.

+ 2 Ccs to Mr.M.T.Arunan, ACGSC Sr.No.27469.
+ 2 Ccs to Mrs.N.Beulal John Selvaraj, Advocate Sr.Nos.27546,27545.
+ 2 Ccs to Government Pleader, SR.No.27578.

GV (CO)
RSM/3.7.2006

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